

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1234 Session of
1995

INTRODUCED BY LLOYD, CAPPABIANCA, PESCI, TIGUE, BELARDI,
ROBINSON, COLAIZZO, WOZNIAK, YOUNGBLOOD, PISTELLA, MIHALICH,
BATTISTO, HALUSKA, ITKIN AND CAWLEY, MARCH 20, 1995

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 20, 1995

AN ACT

1 Amending the act of February 19, 1980 (P.L.15, No.9), entitled
2 "An act establishing the State Real Estate Commission and
3 providing for the licensing of real estate brokers and
4 salesmen," further providing for the State Real Estate
5 Commission, for authority to examine applicants, for
6 prohibited acts and for application for recovery from fund;
7 and providing for surrender of suspended or revoked license,
8 for injunctive relief and for reporting of multiple licensure
9 or certification.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 202 of the act of February 19, 1980
13 (P.L.15, No.9), known as the Real Estate Licensing and
14 Registration Act, amended or added March 29, 1984 (P.L.162,
15 No.32) and June 29, 1990 (P.L.246, No.58), is amended to read:

16 Section 202. State Real Estate Commission.

17 (a) The State Real Estate Commission is hereby created and
18 shall consist of the Commissioner of Professional and
19 Occupational Affairs; the Director of the Bureau of Consumer
20 Protection, or his designee; three members who shall be persons
21 representing the public at large; five other persons, each of

1 whom shall at the time of his appointment be a licensed and
2 qualified real estate broker under the existing law of this
3 Commonwealth, and shall have been engaged in the real estate
4 business in this Commonwealth for a period of not less than ten
5 years immediately prior to his appointment; and one other person
6 who shall have been licensed as a real estate broker, or
7 cemetery broker, for a period of at least five years and shall
8 have been engaged in selling cemetery lots for at least ten
9 years immediately prior to his appointment. Each of said members
10 of the commission shall be appointed by the Governor by and with
11 the advice and consent of a majority of the members elected to
12 the Senate.

13 (b) The term of office of each of said members shall be five
14 years from his appointment, or until his successor has been
15 appointed and qualified but not longer than six months beyond
16 the five-year period. In the event that any of said members
17 shall die or resign during his term of office, his successor
18 shall be appointed in the same way and with the same
19 qualifications as above set forth and shall hold office for the
20 unexpired term. No board member shall be eligible for
21 appointment to serve more than two consecutive four-year terms.

22 (c) A majority of the members currently serving on the
23 commission shall constitute a quorum. The commission shall elect
24 a chairman, vice-chairman and secretary from among its members.
25 A commission member who fails to attend three consecutive
26 meetings shall forfeit his seat unless the Commissioner of
27 Professional and Occupational Affairs, upon written request from
28 the member, finds that the member should be excused from a
29 meeting because of illness or the death of a family member. A
30 member may not be counted as part of a quorum or on any issue

1 unless he or she is physically in attendance at the meeting.

2 (d) Each member of the commission other than the
3 Commissioner of Professional and Occupational Affairs shall
4 receive reimbursement for reasonable expenses in accordance with
5 Commonwealth regulations and per diem compensation at the rate
6 of \$60 per day for the time actually devoted to the business of
7 the commission.

8 (e) In addition to regularly scheduled meetings of the
9 commission, there shall be at least one public meeting each year
10 in Pittsburgh, one public meeting each year in Philadelphia and
11 one public meeting each year in Harrisburg. At least 15 days
12 prior to the holding of any public meeting pursuant to this
13 subsection, the commission shall give public notice of the
14 meeting in a newspaper of general circulation in each of the
15 areas where the public meeting is to be held. The purpose of
16 these special meetings shall be to solicit from members of the
17 public, suggestions, comments and objections about real estate
18 practice in this Commonwealth.

19 (f) A public member who fails to attend two consecutive
20 statutorily mandated training seminars in accordance with
21 section 813(e) of the act of April 9, 1929 (P.L.177, No.175),
22 known as "The Administrative Code of 1929," shall forfeit his or
23 her seat unless the commissioner, upon written request from the
24 public member, finds that the public member should be excused
25 from a meeting because of illness or the death of a family
26 member.

27 Section 2. Section 403 of the act is amended to read:

28 Section 403. Authority to examine applicants.

29 The commission is empowered to prescribe the subjects to be
30 tested. [The department shall arrange for the services of

1 professional testing services to write and administer
2 examinations on behalf of the commission in accordance with
3 commission guidance and approval.] Examinations shall be
4 prepared and administered by a qualified and approved
5 professional testing organization in accordance with section
6 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as
7 "The Administrative Code of 1929."

8 Section 3. Section 408 of the act, added March 29, 1984
9 (P.L.162, No.32), is amended to read:

10 Section 408. Reports [to legislative committees].

11 (a) The commission shall submit annually a report to the
12 Professional Licensure Committee of the House of Representatives
13 and to the Consumer Protection and Professional Licensure
14 Committee of the Senate a description of the types of complaints
15 received, status of cases, board action which has been taken and
16 the length of time from the initial complaint to final board
17 resolution.

18 (b) The commission shall also submit annually to the House
19 of Representatives and the Senate Appropriations Committees, 15
20 days after the Governor has submitted his budget to the General
21 Assembly, a copy of the budget request for the upcoming fiscal
22 year which the commission previously submitted to the
23 department.

24 (c) The commission shall also submit annually to the
25 Department of State an estimate of the financial requirements of
26 the board for administrative, investigative, legal and
27 miscellaneous expenses.

28 Section 4. The act is amended by adding sections to read:
29 days.

30 Section 502. Surrender of suspended or revoked license or

1 certificate. The commission shall require a person whose license
2 or certificate has been suspended or revoked to return the
3 license or certificate in such manner as the commission directs.
4 A person who fails to do so commits a misdemeanor of the third
5 degree.

6 Section 503. Injunctive relief.

7 (a) A violation of this act may be enjoined by the courts
8 upon petition of the commissioner or the commission. In any
9 proceeding under this section, it shall not be necessary to show
10 that any person is individually injured by the actions
11 complained of. If the court finds that the respondent has
12 violated this act, it shall enjoin the respondent from so
13 practicing or holding himself out until the respondent has been
14 duly certified. Procedure in such cases shall be the same as in
15 any other injunction suit.

16 (b) The injunctive remedy provided in this section shall be
17 in addition to any other civil or criminal prosecution and
18 punishment.

19 Section 5. Section 604(a) introductory paragraph of the act,
20 amended March 29, 1984 (P.L.162, No.32), is amended to read:

21 Section 604. Prohibited acts.

22 (a) The commission may upon its own motion, and shall
23 promptly upon the verified complaint in writing of any person
24 setting forth a complaint under this section, ascertain the
25 facts and, if warranted, hold a hearing for the suspension or
26 revocation of a license or registration certificate or for the
27 imposition of fines not exceeding \$1,000, or both. The
28 commission shall have power to [refuse a license or registration
29 certificate] deny, suspend or revoke certificates and licenses,
30 or limit, restrict or reprimand certificate holders and

1 licensees, for cause or to suspend or revoke a license or
2 registration certificate or to levy fines up to \$1,000, or both,
3 where the said license has been obtained by false
4 representation, or by fraudulent act or conduct, or where a
5 licensee or registrant, in performing or attempting to perform
6 any of the acts mentioned herein, is found guilty of:

7 * * *

8 Section 6. The act is amended by adding a section to read:

9 Section 703. Reporting of multiple licensure or
10 certification.

11 A licensee or certificate holder under this act who is also
12 certified or licensed in another state, territory or country
13 shall report this information to the commission on every renewal
14 application. Any disciplinary action taken in any other state,
15 territory or country shall be reported to the board on the
16 licensee's or certificate holder's next renewal application, or
17 within 90 days of disposition, whichever is sooner. Multiple
18 licensure or certification shall be noted by the commission on
19 the licensee's or certificate holder's record, and the state,
20 territory or country shall be notified by the commission of any
21 disciplinary action taken against the licensee or certificate
22 holder in this Commonwealth.

23 Section 7. Section 803 of the act, amended March 29, 1984
24 (P.L.162, No.32), is amended to read:

25 Section 803. Application for recovery from fund.

26 (a) When any aggrieved person obtains a final judgment in
27 any court of competent jurisdiction against any person licensed
28 under this act, upon grounds of fraud, misrepresentation or
29 deceit with reference to any transaction for which a license or
30 registration certificate is required under this act (including

1 with respect to cemetery companies any violation of 9 Pa.C.S. §
2 308(b) (relating to accounts of qualified trustee)) and which
3 cause of action occurred on or after the effective date of this
4 act, the aggrieved person may, upon termination of all
5 proceedings, including reviews and appeals, file an application
6 in the court in which the judgment was entered for an order
7 directing payment out of the Real Estate Recovery Fund of the
8 amount unpaid upon the judgment, plus court costs.

9 (b) The aggrieved person shall be required to show:

10 (1) That he is not a spouse of the debtor, or the
11 personal representative of said spouse.

12 (2) That he has obtained a final judgment as set out in
13 this section.

14 (3) That all reasonable personal acts, rights of
15 discovery and such other remedies at law and in equity as
16 exist have been exhausted in the collection thereof.

17 (4) That he is making said application no more than one
18 year after the termination of the proceedings, including
19 reviews and appeals in connection with the judgment.

20 (c) The commission shall have the right to answer actions
21 provided for under this section, and subject to court approval,
22 it may compromise a claim based upon the application of the
23 aggrieved party.

24 (d) When there is an order of the court to make payment or a
25 claim is otherwise to be levied against the fund, such amount
26 shall be paid to the claimant in accordance with the limitations
27 contained in this section. Notwithstanding any other provisions
28 of this section, the liability of that portion of the fund
29 allocated for the purpose of this act shall not exceed \$20,000
30 for any one claim and shall not exceed \$100,000 per licensee.

1 regardless of the number of licenses the licensee holds. If the
2 \$100,000 liability of the Real Estate Recovery Fund as provided
3 herein is insufficient to pay in full claims adjudicated valid
4 of all aggrieved persons against any one licensee or registrant,
5 such \$100,000 shall be distributed among them in such ratio that
6 the respective claims of the aggrieved applicants bear to the
7 aggregate of such claims held valid. If, at any time, the money
8 deposited in the Real Estate Recovery Fund is insufficient to
9 satisfy any duly authorized claim or portion thereof, the
10 commission shall, when sufficient money has been deposited in
11 the fund, satisfy such unpaid claims or portions thereof, in the
12 order that such claims or portions thereof were originally
13 filed, plus accumulated interest at the rate of 6% a year.

14 (e) Upon petition of the commission the court may require
15 all claimants and prospective claimants against one licensee or
16 registrant to be joined in one action, to the end that the
17 respective rights of all such claimants to the Real Estate
18 Recovery Fund may be equitably adjudicated and settled.

19 (f) Should the commission pay from the Real Estate Recovery
20 Fund any amount in settlement of a claim as provided for in this
21 act against a licensee, the license of that person shall
22 automatically suspend upon the effective date of the payment
23 thereof by the commission. No such licensee shall be granted
24 reinstatement until he has repaid in full plus interest at the
25 rate of 10% a year, the amount paid from the Real Estate
26 Recovery Fund.

27 (g) Should the commission pay from the Real Estate Recovery
28 Fund any amount in settlement of a claim as provided for in this
29 act against a registrant the registrant shall automatically be
30 denied the right to sell cemetery lots upon the effective date

1 of the payment thereof by the commission. No such registrant
2 shall be granted the right to sell cemetery lots until he has
3 repaid in full plus interest at the rate of 10% a year, the
4 amount paid from the Real Estate Recovery Fund.

5 (h) A dispute between two licensees shall not result in
6 recovery from the Real Estate Recovery Fund.

7 Section 8. The following acts and parts of acts are
8 repealed:

9 (1) Section 2 of the act of September 2, 1961 (P.L.1177,
10 No.525), referred to as the Board and Commission Compensation
11 Law.

12 (2) Section 222 of the act of July 1, 1978 (P.L.700,
13 No.124), known as the Bureau of Professional and Occupational
14 Affairs Fee Act.

15 (3) The last sentence of 9 Pa.C.S. (§ 304(a)(1)).
16 Section 9. This act shall take effect in 60 days.